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Recent Developments

United States v. Alvarez-Machain:
THE UNITED STATES GOVERNMENT MAY ABDUCT FOREIGN CITIZENS FROM FOREIGN TERRITORY UNLESS EXPRESSLY FORBIDDEN BY AN EXTRADITION TREATY.

In *United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992), the United States Supreme Court held that the U.S. government may forcibly abduct a foreign national to bring that person to trial for alleged violations of federal criminal law. The Court stated that an extradition treaty between the United States and a foreign nation creates a mechanism to deliver criminal suspects, but does not limit the government's options unless expressly stated in the treaty. As such, a forcible abduction to gain jurisdiction over a foreign national does not create a jurisdictional defense in a United States District Court.

In the late 1980s, Enrique Camarena, a special agent for the Drug Enforcement Administration ("DEA"), was kidnapped and murdered while investigating drug trafficking through Mexico. An autopsy revealed that he had been severely tortured before dying. The DEA believed that Humberto Alvarez-Machain ("Alvarez"), a Mexican doctor, intentionally prolonged Camarena's life to allow further torture and interrogation. A federal indictment was issued for Alvarez's arrest.

After DEA officials unsuccessfully attempted to gain custody of Alvarez

through informal negotiations with Mexican officials, the DEA offered a reward plus expenses to the person who delivered Alvarez to the United States. On April 2, 1990 DEA officials arrested Alvarez after he had been forcibly kidnapped in Guadalajara, Mexico and flown in a private plane to El Paso, Texas. Though they were not personally involved, DEA agents were responsible for the kidnapping.

In the United States District Court for the Central District of California, Alvarez moved for dismissal claiming that the court lacked jurisdiction. His claim was based on alleged violations of the Extradition Treaty ("Treaty") between the United States and Mexico. After concluding that Alvarez's abduction did violate the Treaty, the district court ordered that Alvarez be repatriated to Mexico. The United States Court of Appeals for the Ninth Circuit affirmed the lower court and concluded that the government-backed abduction, combined with the official Mexican protests, violated the "purpose" of the Treaty.

On appeal to the United States Supreme Court, the United States principally argued that the forcible, international abduction did not bar the district court's jurisdiction because such action failed to invoke the treaty. *Id.* at 2193. Alvarez, on the other hand, contended that the Treaty applied and that its implied terms established extradition as the exclusive means for the United States to gain custody of a person located on Mexican soil. *Id.*

Even though it had not previously addressed this precise issue, the Court noted that it had separately addressed two key sub-issues in cases involving alleged violations of the extradition treaties and jurisdictional claims based on forcible abductions. The Court, after reviewing the relevant case law, embraced the government's argument that the key issue was whether the Treaty had been invoked. *Id.* If the Treaty was not invoked, then the "forcible abduction [was] no sufficient reason why the party [Alvarez] should not answer" for the offense. *Id.* (quoting *Ker v. Illinois*, 119 U.S. 436 (1886)). If the Treaty was invoked, then the Court would determine whether the abduction violated the Treaty. However, notwithstanding the factual basis of *Ker*, the Court simplified the issue by ruling that governmental involvement in the abduction was irrelevant. *Id.* at 2192 n.7.

The Court found that the Treaty neither directed the parties to refrain from forcible abductions, nor explained the consequences if either party took such action. *Id.* at 2193. Alvarez argued that Articles 22(1) and (9) established that the Treaty was meant to prohibit forcible international abductions. *Id.* Article 22(1) stated that the Treaty shall apply to certain crimes (including murder) whether the crime occurred before or after the enactment of the Treaty. Alvarez argued that this section made application of the Treaty compulsory for the listed crimes. *Id.* at 2194. Nevertheless, the Court inter-

preted the section as simply denoting that the Treaty related back to crimes which occurred before the Treaty was ratified. *Id.*

Next the Court determined that section 9 of the Treaty "provide[d] a mechanism [for extradition] which would not otherwise exist," but did not represent the only mechanism for gaining custody. *Id.* at 2193-94. Article 9 provided that after receiving an official request for extradition, a nation could either extradite the requested person or prosecute the person on its own. *Id.* at 2194. Thus, Alvarez contended, Article 9 specified the only manner in which a nation could gain custody over an individual on foreign soil. He asserted that the restrictions and procedures established by the Treaty became superfluous if either nation was allowed to circumvent the Treaty through forcible abductions. *Id.* The Court bolstered its position, however, by noting that Mexico had actual notice of the *Ker* doctrine and the doctrine's applicability to the Treaty. *Id.*

Finally, the Court ruled that the general international law's prohibition of forcible abductions did not have effect under the Treaty, nor required that a similar prohibition be implied into the Treaty. *Id.* at 2194. Alvarez recognized that under the Treaty, the rights of the abducted individual were a derivative of the rights of the allegedly aggrieved nation. As such, once that nation protested the abduction, the nation's rights under the Treaty were transformed into the individual's rights under the international law. Alvarez concluded that because both the abduction violated his individual rights and Mexico filed a protest, the Treaty must be enforced on his behalf to bar the *in personam* jurisdiction of the United States District Court. *Id.* at 2195. The Court rejected this theory for two reasons. First, the Court opined that such rigid enforcement produced unjust results if one nation acted offensively toward the other. *Id.* Second, the Court pronounced that only the law

between nations specifically applied to extradition treaties should be considered, not the full body of the general international law. *Id.*

A lengthy dissent written by Justice Stevens and joined by Justices Blackmun and O'Connor condemned the majority ruling for turning the terms of the Treaty into little more than verbiage. The dissent accused the Court's entire opinion of being critically flawed because it failed to differentiate between private conduct and governmental action. *Id.* at 2203. The dissent concluded that the abduction was expressly sanctioned by the Executive Branch and was therefore constituted a flagrant breach of the Treaty. *Id.*

Thus, the majority of the Supreme Court, in *U.S. v. Alvarez-Machain*, held that the U.S. government may solicit the forcible abduction of a foreign national in order to obtain jurisdiction over that person. In so doing, the Court established the rule that the existence of an extradition treaty between the nations is consequential only if the treaty is invoked. This decision may seriously affect the United States's future efforts to initiate joint actions with foreign nations who are already leery of the United States. After this case was decided, Mexico promptly ceased all joint actions with the DEA and also began the process of re-evaluating the Treaty. However, it is likely that the Court sought to make the "right" decision under the circumstances in order to allow the courts to decide the innocence, or guilt, of an alleged villain. By adopting the approach that an extradition treaty must be invoked to have effect, the Court eliminated treaty-based jurisdictional challenges to international abductions and granted the United States a free hand to grab suspected criminals and bring them to trial.

- Brett R. Wilson

***MVA v. Chamberlain*: DRUNK DRIVERS NEED NOT BE INFORMED OF ALL DISPARITIES BETWEEN SANCTIONS FOR FAILING A CHEMICAL ALCOHOL CONCENTRATION TEST AND REFUSING TO TAKE SUCH A TEST ALTOGETHER.**

In a unanimous decision interpreting sections of Maryland's transportation statutes relating to drunk driving, the Court of Appeals of Maryland in *MVA v. Chamberlain*, 326 Md. 296, 604 A.2d 919 (1992), ruled that a police officer is not required to inform an intoxicated motorist of all potential differences in penalties between refusing and failing a chemical alcohol concentration test. In so holding, the Court declined to recognize additional procedural protection for motorists who decline to submit to a blood alcohol test.

The defendant Chamberlain was stopped by a police officer for speeding and suspicion of driving while intoxicated. After the officer performed some field sobriety tests on Chamberlain, the officer placed Chamberlain under arrest for driving while intoxicated. Then, quoting section 16-205.1 of the Transportation Article of the Maryland Annotated Code, the officer informed Chamberlain of his rights pertaining to taking a chemical test to determine his blood alcohol level.

The officer told Chamberlain of his right to refuse to submit to the test but warned that a refusal would result in an administrative suspension of his Maryland driver's license. Additionally, the officer stipulated that "[s]uspension by the Motor Vehicle Administration shall be 120 days for a first offense and one year for a second or subsequent offense." *Chamberlain*, 326 Md. at 310, 604 A.2d at 921 (quoting Md. Trans. Code Ann. § 16-205.1(b) (1987)).

Chamberlain was also told of the consequences of failing to take the test. The officer, quoting from an advice of rights form, warned Chamberlain that if he submitted to the test, and the results indicated an alcohol concentra-